Before the
Federal Communications Commission
Washington, D.C. 20554

In The Matter Of	)	
	)	
Petition for Forbearance From	)	CC Docket No. 03-157
The Current Pricing Rules for the	)	
Unbundled Network Element Platform	)	

COMMENTS OF TEXALTEL F/K/A SOUTHWEST COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (SWCTA) ON VERIZON'S PETITION FOR EXPEDITED FORBEARANCE

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On July 3, 2003, The Federal Communications Commission's ("Commission") released its notice for public comment on the Expedited Forbearance petition ("the Petition") filed by Verizon on July 1, 2003. On July 15, 2003, the Commission extended the deadline for public comments to August 18, 2003 and the deadline for reply comments to September 2, 2003. TEXALTEL hereby files initial comments pursuant to the commission notice. TEXALTEL is a regional trade association comprised of telecommunications carriers. TEXALTEL was founded in 1983 to promote the interests of competitive telecommunications companies in the Southwest. TEXALTEL membership includes a broad spectrum of telecommunications companies, including those that utilize UNE-P, those that provide service over a hybrid of their own facilities and those of the RBOC and those that are building fiber networks to the home.

I. Introduction

TEXALTEL files these comments in response to the public notice issued by the Commission regarding the Petition for Expedited Forbearance of the Verizon Telephone Companies.

We urge the Commission to reject Verizon's plea for Expedited Forbearance from UNE-P and reject Verizon's arguments against TELRIC based pricing. In Texas, it is our belief that approximately 90% of the access lines served by competitors are served via UNE-P. Competitors are still heavily dependent on Unbundled Network Elements in order to compete, and any withdrawal of major portions of these elements (such as UNE-P) would devastate competition and return consumers to the monopoly that they faced prior to passage of FTA.

We also point out that opening its networks to competition, including permitting CLECs to purchase unbundled network elements priced based on TELRIC, were requirements of the Federal Telecommunications Act that Verizon complied with in order to be allowed to re-enter the long distance market place. We assume that regulators are as incensed as are we that Verizon seeks to be relieved of these requirements, but makes no mention of withdrawing from the long distance market place. We do not believe that state commissions and the FCC have agonized over the requirements of section 271 of FTA (regarding eligibility of ILECs to provide interLATA services) just to conclude that those requirements were temporary for just a few years, to be discarded at the whim of an ILEC. Verizon has not even offered a prima facia case that competition is sustainable, nor that the elements it seeks to withdraw do not meet the "necessary and impairment" standards of FTA. As such, Verizon's petition is fatally defective and should be summarily dismissed.

II. UNE-P Is Not Responsible For The Current State Of The Economy

Verizon's statements that UNE-P is the reason the telecommunications sector has met such difficult economic times is simply absurd. There are many reasons that ILECs have chosen to limit certain investments in their networks. Such reasons are tied to their stock price, which is tied to overall stock market conditions. To attempt to attach this blame to the Federal Telecom Act, or to policies implemented by the FCC is nonsensical. In fact, UNE-P permits the facilities of the ILEC to remain revenue producing at rates, which regulators have carefully crafted to recover costs rather than to be abandoned as customers transition to competitor networks. While ILECs whine constantly about the loss of retail business, the fact is that the vast majority of those customers remain on the ILECs networks. If competitors had done as Verizon and other RBOCs suggest – build their own facilities to serve these customers, the loss of revenues experienced by Verizon would be tremendously greater. The fact that competitors could not have build this quantity of facilities and marketed to the same customers at the same time, makes a huge statement of itself – Verizon is simply trying to reclaim lost customers.

We acknowledge that the development of competition has caused ILECs to lose retail customers. That competition has come in part form CLECs, in part from losses to cellular providers, and then we must all admit that the slowing economy of the last couple years has caused demand, or at least the growth in demand, to diminish. Quite frankly, one has to wonder where the RBOCs thought CLECs would get customers from – we certainly cannot manufacture them.

The telecom industry has suffered the same boom to bust trend as the "dot.com" and other high tech industries – even to greater extremes than most. A period of rapid expansion form 1995 through about 2000 caused excess facility investments. Much of the lack of investment today is because there is still a glut of equipment. Again, to blame this on regulators is patently unfair. This is a cycle that is typical of most segments of our economy from time to time.

Also, Verizon is being less than honest with the Commission when it points to UNE-P as the reason it currently has slowed its investments. In fact, such a statement should be a warning flag to the Commission. Verizon, and the other RBOCs in various other proceedings, are issuing a threat. The ILECs want protection from competition and they are holding their own facilities investment over the heads of regulators and legislators to attempt to extort their desired end result. The fact is, under today's economic pressures, the ILECs wouldn't likely invest in anything more than is currently being deployed. The ILECs' current rate of investment directly correlates to the state of the economy. It also relates to other times of economic uncertainty. The ILECs are a business that must answer to their shareholders. It is likely that, under today's economic pressures, the ILEC shareholders would not approve of the rapid, unfettered and expensive investment that Verizon alludes to in the Petition. Don't be lured in by Verizon's threats. When the economy picks up speed, the ILECs will once again return to capital investments, regardless of the status of UNE-P.

III. The Economics Of The Telecommunications Industry

Verizon's assertion in its petition that forbearance from TELRIC pricing for the unbundled network element platform (UNE-P) is in the public interest is erroneous. The public interest is only truly served by vibrant competition. What Verizon's petition suggests, actually, is allowing the RBOCs to close off means for competitors to access the network and forcing them to build their own. Verizon knows that investment dollars for expensive capital is limited and so it is no surprise that this is the method they suggest to the Commission as the most appropriate path to competition. Competitors cannot do so. It would take years to duplicate the networks that Verizon and others built over the last 100 years, and billions of dollars. Such funding does not exist, and would cause precisely the wrong kinds of investment. It would be a huge disservice to force CLECs to duplicate facilities that already exist in ample or even excess quantity with more of the same facilities. For new investment to provide a benefit to the public, it should be new and innovate technologies and/or facilities that do not already exist. Even if competitors could duplicate Verizon's network, we urge that public policy should move them toward building what Verizon does not have – newer facilities, innovative technologies, and provision of services that Verizon does not today provide. Preoccupying them with the need to build, in a short span of time, the same facilities that already exist, in order to continue providing the same services to the same customers that they serve today, would be a huge waste, assuming it was even conceivable that they could do so.

To reiterate our comments filed in CC Docket 01-338, also known as the Triennial Review proceeding. UNE-P is vital to the survival of our industry. It has proven to be the most efficient mode of entry into the telecommunications market by allowing competitors time to build a customer-base, and more importantly, a small profit margin, so that they are financially sustainable. Only after a firm has reached this plateau can it attract capital necessary to build some of its own facilities. And the opportunities of the market place should dictate where those investments should be made.

The natural evolution of the industry includes the following steps; in the order we lay before you. First, CLECs enter the market through the most economic method available, being UNE-P or Total Service Resale (TSR). However, the staggering price and low return of TSR leave UNE-P as the most desirable and effective method of entry. Once in the market, CLECs will begin to build a customer base and increase its revenue. Next, CLECs will begin searching for innovative technology to combine with its current service provisioning to distinguish themselves from the pack – to offer newer services or to reduce their costs. It is important to note that the natural evolution of the industry provides for facilities investment as the last piece of the puzzle, not the first. Facilities investment is the mark of solid companies with customers, revenue and solid business plans. ***We cannot repeat this refrain often enough, sound economic practice requires a competitor to have a strong customer base thus revenues before it can invest in a capital-intensive network.***

TEXALTEL will address the allegations of Verizon that UNE-P is a money loser and TELRIC is a flawed pricing scheme. The recent state proceedings pointed out by Verizon in the Petition have indeed lowered UNE rates across the country. However, that does not prove the allegation that TELRIC is a flawed pricing mechanism and that RBOCs continue to lose money on UNE-P. As regulators already know, TELRIC includes a reasonable profit for the ILEC. And, most importantly, it is only excess (unused) facilities that the ILEC must provide at TELRIC based prices. The reality is that any income on unused facilities, even if a fraction of the TELRIC cost, is better for the ILEC than no income at all. ILECs have asserted in state proceedings in Texas that "avoidable costs", those costs that they can avoid by discontinuing the use of facilities, are tremendously less than incremental costs (TELRIC). The recent wholesale rate reduction seen in several states is indicative of what is commonly known – the costs of telecom equipment continue to fall. It is not indicative of a fundamental flaw in TELRIC nor of the Commission. In truth, the reason we have witnessed such rate reductions is based on the economic fact that the cost of a network declines as the costs of electronic (microchip based) and fiber optic equipment continues to decline.

The simple fact of the matter is, RBOCs make money leasing lines to competitors, even UNE-P lines, they just don't make as much money as they would like. As we pointed out above, TELRIC includes a *reasonable* profit for ILECs. We ask that you look to a recent report entitled *Wholesale Lies: The Truth about RBOC UNE-P Costs* published by The Competitive Telecommunications Association (CompTel). According to the report, under current pricing methodology, the RBOCs receive between 16% and 33% return on their investment through UNE-P.[1] This return hardly indicates a money loser for the incumbent.

IV. Conclusion

It is no surprise the RBOCs complain so loudly against UNE-P and have continued to suggest that competitors be required to do the impossible – invest money they don't have, or exit the market. Verizon's cry for relief is a familiar tune, one we have heard at both the federal and state levels since the RBOCs were granted entry into the long distance market. RBOCs want to roll back the very obligations that allowed them access to the long distance market and they want to remonopolize their market areas. This, and not some altruistic idea to protect facilities-based providers, is what drive the constant attacks on UNE-P. Verizon is aware that most competitors cannot sustain the financial impact of the policies it suggests the FCC follow - multi-billion dollar equipment and fiber purchases without also having a solid customer base from which to draw revenue. Verizon's suggestion is a clear road, but not a road to competition, more like a road to the bankruptcy of the competitive telecommunications market.

Finally, we would like to suggest that if the RBOCs are so intent to roll back their unbundling obligations and the promises they made in order to gain entry into the long distance market, they must exit that market, as they are no longer in compliance with FTA section 271. If

[1] *Wholesale Lies: The Truth about RBOC UNE-P Costs,* Competitive Telecommunications Association (CompTel),

it is Verizon's proposal that accompanying its petition to escape the 271 requirements it is agreeable to exiting the interLATA long distance marketplace, then, and only then, should its petition be given anything more than a passing glance as it is bounced back out the door it entered.

Respectfully Submitted,

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